



February 2, 2001

Mr. Renaldo L. Stowers
Associate General Counsel
University of North Texas
P.O. Box 310907
Denton, Texas 76203-0907

OR2001-0405

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 143898.

The University of North Texas (the “university”) received two requests for information relating to a named individual. You claim that the requested information must be withheld from disclosure under section 552.026 of the Government Code in conjunction with the federal Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g.¹ We have considered your arguments and have reviewed the information you submitted.²

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

¹As we are able to resolve this matter under section 552.026 and FERPA, we do not address the applicability of any of the other exceptions you raised.

²This letter ruling assumes that the representative samples of information you submitted are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student or one or both of the student's parents." *See* Open Records Decision Nos. 332 (1982), 206 (1978).

In this instance, you indicate that the submitted information concerns a student of the university. Having carefully reviewed that information, we conclude that it constitutes an education record under FERPA. Therefore, under FERPA, the university must withhold the information in question from both of the requestors at this time. In reaching this conclusion, we note that the second requestor, Mr. Bonneau, identifies himself as an attorney for the student in question. He also states that he has "enclosed an Authorization signed by [the student] allowing you to release this information to me." However, as you did not submit such a document to this office in asking for this decision, we do not consider whether the university is authorized to release the information in question to Mr. Bonneau. The university must not do so until such time as it receives authorization that comports with the requirements of FERPA. *See* 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.30.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

³Questions about the applicability of FERPA to information that is the subject of a request for information under the Public Information Act may be addressed to the United States Department of Education's Family Policy Compliance Office at the following address and telephone number:

Family Policy Compliance Office
United States Department of Education
600 Independence Avenue S.W.
Washington, D.C. 20202-4605
(202) 260-3887

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaw Morris III", written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 143898

Encl: Submitted documents

cc: Ms. Allyson Platt
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